BEFORE THE REGIONAL FORESTER, OBJECTION REVIEWING OFFICER REGION ONE OF THE UNITED STATES FOREST SERVICE

In Re: Objection of Beaver Creek)
Project Draft Record of Decision (ROD))
And Final Environmental Impact Statement (FEIS)
By the Coeur d'Alene River Ranger District

KOOTENAI ENVIRONMENTAL ALLIANCE, OBJECTOR
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DATED this _4th___ day of April, 2014

By _/s/ Mike Mihelich
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Introduction

NOTICE IS HEREBY GIVEN that the Kootenai Environmental Alliance (KEA), objects pursuant to 36 CFR § 218 Subparts A and B to the Objection Reviewing Officer, USDA Forest Service Northern Region, Missoula, MT, from the Beaver Creek Project Draft ROD and FEIS for the project, located on the Coeur d'Alene River Ranger District of the Idaho Panhandle National Forests. Idaho Panhandle National Forest Supervisor Mary Farnsworth is the Responsible Official for this project. Legal Notice 314 was published in the Newspaper of Record on February 21, 2014. The 45-day objection period ends April 7, 2014.

On page two (2) of the cover letter, file code 1950, dated January 21, 2014, it is indicated electronic objections must be submitted by e-mail to appeals-northern-regional-office@fs.fed.us
KEA is objector (per 36 CFR§218.5(A) and 36 CFR 218.8(d). KEA will be referred to as 'objector' or 'the objector'.

KEA is a non-profit organization dedicated to maintaining, protecting, and restoring the native ecosystems of north Idaho. KEA has an organizational interest in the proper and lawful management of the Idaho Panhandle National Forests, including the Coeur d'Alene River Ranger District. KEA's members participate in a wide range of recreational activities on the IPNF, including in and around the Beaver Creek area.

KEA claims standing to participate in the public land decision-making process on the grounds that it has been involved in National Forest management issues for over 20 years. Our members have hiked; fished, hunted and photographed in the IPNF, including in and adjacent to the Beaver Creek project area. The procedural harm and physical impacts associated with this project detract from the ability of our members to be involved in the decision-making process of our public lands.

In addition, KEA members are taxpayers that are required to pay for the activities discussed within the Draft ROD and FEIS. The irretrievable commitments of financial resources associated with this project are also borne by the American people as a whole. KEA claims partial ownership of the public lands covered by this project and consequently has legal standing to participate in the process and object to those projects it finds unacceptable and inconsistent with applicable laws and regulations.

Objector has participated in the comment process associated with this project with an 8-page letter, dated November 3, 2012, submitted in response to the scoping notice. An additional 8-page letter, dated July 19, 2013, was submitted in response to the Draft EIS. A number of specific aquatics/cumulative effects concerns were raised in both letters submitted by the Objector.

Objector is objecting to this project on the grounds the decision is legally indefensible. Objector contends that with this project, Forest Supervisor Mary Farnsworth and the IPNF violate the National Environmental Policy Act (NEPA), the Appeals Reform Act (ARA), the Clean Water Act (CWA), Idaho Water Quality Standards, the National Forest Management Act (NFMA), IPNF Forest Plan, as well as the Administrative Procedures Act (APA).

Statement of Facts

The Forest Supervisor proposes to implement Modified Alternative 2 (Alternative 2), that would log approximately 1,973 acres of National Forest System (NFS) lands. Alternative 2 would remove approximately 37 million board feet, (37 MMBF) of timber with 1.2 miles of permanent new roads being built, and 1.5 miles of new temporary roads also being built.

Arguments

The ensuing arguments will demonstrate the Beaver Creek Project Draft ROD and FEIS will violate the National Environmental Policy Act (NEPA), the Appeals Reform Act (ARA), the CWA, Idaho WQS, the National Forest Management Act (NFMA), the IPNF Forest Plan, as well as the Administrative Procedures Act (APA).

It is important to note for the record the FEIS contains approximately **53 pages** of Errata modifications and corrections to the language that was found in the DEIS. Of the 53 pages, approximately **19 pages** of the modifications and corrections are directed to Hydrology statements found in the DEIS. (Emphasis added)

1. Aquatics/ IPNF Forest Plan violations

Page 26 of the Draft ROD includes a section titled Forest Plan Consistency that concerns requirements found in the 1987 IPNF Forest Plan. The first sentence states the activities that will occur under the Selected Alternative are consistent with the Forest Plan.

The second sentence is as follows. "*All management activities will be in compliance with Management Area direction, including goals and objectives, as described in the EIS (Chapter 3, by resource) and summarized below*."
The word Standards is not found in either of the sentences that begin the discussions on page 26 of the Draft ROD.

However, there is an extensive discussion of Forest Plan Standards in the 1987 IPNF Forest Plan, beginning on page II-24. On page II-33 seven Water Standards are listed. Water Standard #1 states that "*Management activities ..... will ensure that state water quality standards will be met or exceeded*."

Water Standard #2 required the IPNF to "*Maintain concentrations of total sediment or chemical constituents with State standards*."

Water Standard #6 concerned first and second order streams. This Standard required the IPNF to maintain existing biota and maintain the physical integrity of the first and second order streams.

The Aquatics Errata corrections/modifications in the FEIS, including pages eight (8) and 10 do not support the contention Forest Plan Standards 1, 2, and 6 will be fully met with the Selected Alternative 2.
The following sentence is found on page eight (8) of the FEIS. "*Beaver Creek and its tributaries do not fully support beneficial uses as outlined by Idaho water quality standards (IDAPA 58.01.02) due to sediment, temperature, cadmium, lead, and zinc*."

The following sentence is found on page 10 of the FEIS. "*Beaver Creek and its tributaries do not fully support beneficial uses as outline by Idaho water quality standards (IDAPA 58.01.02), due in part to sediment as previously stated in the existing condition for hydrology."*

The corrections on both pages clearly indicate the current sediment, temperature, and metals levels in Beaver Creek and its tributaries do not meet Idaho Water Quality Standards.

The corrections/modifications found on page 24 of the FEIS address Forest Plan Water Standard #2. It is stated both Alternatives would decrease sediment or chemical concentrations, but not to within State of Idaho standards due to activities by other federal agencies, the state of Idaho, or private ownerships in the drainage. Not mentioned on page 24 is that there are approximately 24,839 acres of NFS lands out of the 28,200-acres that comprise the Beaver Creek Resource Area, page 4 of Silviculture Report.

The May 23, 2001 Idaho DEQ document "Sub-basin Assessment and TMDL of the North Fork Coeur d'Alene River includes specific information regarding the Beaver Creek Area, Chapter 3, page 62. The ownership in the area is shown as; 87.6% USFS, 4.8% private, 4.6% Louisiana Pacific, and 2.8% BLM lands.
The current allocation of sediment assigned to the USFS is listed as 863 tons/year. The sediment allocation for private lands is 48 tons/year, for L-P 45 tons/year, and for BLM 28 tons/year.

Page eight of the FEIS notes that "… *the required sediment reduction of all landowners in Beaver Creek is to reduce sediment loads by 704 tons/year*". Page eight does not list the individual reductions assigned to the USFS, private, L-P, and BLM, but the procedure to calculate the reductions is found on page 65 of the Idaho DEQ document. "*The level of reduction required by any individual management agency or landowner in any of the basins is governed by the percentage of land owned or managed."*

For the USFS, the required reduction in the Beaver Creek subbasin is approximately 616 tons/year (87.6% of 704 tons/year).
Table 53, located on page 26 of the FEIS describes and lists the total existing sediment contributed by roads under the no action Alternative. This figure is given as 221 tons. Table 53 also lists the total amount of sediment that would be removed from all streams in all of Beaver Creek with Alternative 2. This figure is given as 144.9 tons.
The remaining approximately 76 tons of sediment contributed by roads is not accounted for in Table 53.

Table 41 in the FEIS, page 15 lists approximately 80.3 tons of sediment that would be reduced due to proposed roadwork associated with Alternative 2.
Table 42 in the FEIS lists approximately 13.7 tons of sediment that would be reduced due to decommissioning of roads associated with Alternative 2.
Table 43 in the FEIS lists approximately 50.9 tons of additional sediment that would be reduced due to ground-disturbing decommissioning activities associated with Alternative 2.
The sediment reduction shown in Tables 41, 42, and 43 amounts to approximately 144.9 tons which is the same amount as shown in Table 53 of the FEIS.

The figure of 144.9 tons of sediment reduction with all road related activities associated with Alternative 2 requires an additional reduction of approximately 471 tons/year of sediment in order to meet the required TMDL reduction total of 616 tons/year from NFS lands in the Beaver Creek drainage.
There is no supporting high quality data in the FEIS that indicates an additional 471 tons/year of sediment will be reduced from NFS lands in the Beaver Creek project area either by ongoing actions and/or by all sediment reductions associated with Alternative 2.

The information in the FEIS, including pages 8, 10, and 24, as well as the Hydrology Report show that sediment would continue to be released into waterbodies in the Beaver Creek project area. Sediment will continue to be released with the implementation of Alternative 2 and compliance with Idaho WQS and the CWA will not be met.

For the record, it is important to note the issue of sediment pollution did not suddenly appear in 1987. The historical information indicates Federal water quality regulations extend as far back as 1948 when the Federal Water Pollution Control Act was passed. Significant changes occurred in 1972 and the law became known as the Clean Water Act (CWA). The CWA directly applied to activities undertaken on National Forest System (NFS) lands.

There is additional historical information regarding when the IPNF became aware of water quality issues.
The following language is taken from page A-1 of the IPNF FEIS for the Forest Plan Addendum to Appendices A, B & C, August 1987. The title of page A-1 is *Identification of Issues, Concerns, and Opportunities*
"*A notice of Intent to prepare a Forest Plan and Environmental Impact Statement was published in the Federal Register in* ***October 1979"***. (Emphasis added)
"*The preliminary scoping of issues, concerns, and opportunities (ICO) was completed in December 1979*".
It is pointed out on page A-1 that during the 60-day comment period a number of workshops held and over 1,100 statement were received from the public. Nine major issues raised by the public, two of which were fisheries and water.

The ROD for the 1987 IPNF Forest Plan, page 7, states, "*Forest Plan water quality standards will meet or exceed State and federal standards."*

The preface of the Forest Plan for the IPNF states the Forest Plan is in compliance with the National Forest Management Act of 1976. The NFMA at 36 CFR 219.23(d) states "*Forest Planning shall provide for- Compliance with requirements of the Clean Water Act….* "

Objector contends the information presented in the FEIS, the specialist reports, and previous USFS NEPA documents do not support the contention in the Draft ROD, page 26, activities associated with the Selected Alternative 2 are consistent with the 1987 IPNF Forest Plan, in particular the Aquatics Standards requirements found in the Forest Plan.

2. The Cumulative effects analysis is inadequate under NEPA

NEPA at 40 CFR 1500.1(a) includes the following sentence. "*Section 102(2) contains 'action-forcing' provisions to make sure that federal agencies act according to the letter and spirit of the Act."*

NEPA mandates that the USFS adequately disclose and provide an adequate analysis of the direct, indirect, and cumulative effects of the proposed action and alternatives. Objector argues here that the USFS failed to adequately disclose and analyze the direct and indirect effects of important aspects of the proposed action as it relates to Aquatics issues.

"Cumulative impact" is defined in NEPA as, "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future action regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."[1]

The Courts are clear on what they expect from Agencies when preparing a legally sufficient cumulative effects analysis. A "meaningful" analysis of cumulative effects, "should identify (1) the area in which effects of the proposed project will be felt; (2) the impacts that are expected in the area from the proposed project; (3) other actions- past, proposed, and reasonably foreseeable – that have had or are expected to have impacts on the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate."[2]

"Significance" is defined by NEPA as an action that includes: "impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial", 40 C.F.R. §1508.27(b)(1), "Unique characteristics of the geographic area such as proximity to……ecologically critical areas", 40 C.F.R. §1508.27(b)(3) "The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks", 40 C.F.R. §1508.27(b)(5) "Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment." 40 C.F.R. §1508.27(b)(7). "Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment" 40 C.F.R. §1508.27(b)(10).

The Beaver Creek Project Area is approximately 28,200 acres in size, of which approximately 24,839 acres are NFS lands. The Silviculture report, page 10, notes that during the 1990's, there was over 2,500 acres of regeneration (clearcut) logging.

Objector in our July 19,2013 letter cited the 1997 IPNF Wallace & Fernan Ranger Districts Watershed Rehabilitation EA document and specific language from the

[1] 40 CFR 1508.7

[2] City of Carmbel-By-The-Sea v. U.S. Department of Transportation, 95 F. 2d 892, 902 (9th Cir. 1996).

document, including information from pages III-19 and III-20 of the EA. On III-19 it was noted over 3,800 acres were either logged or under contract to be logged in the drainage, with clearcutting being the most common method.

Objector's letter also raised a number of issues associated with previous clearcut logging on steep slopes. These concerns are dismissed in the FEIS, pages L-116 and L-117 as irrelevant, unimportant, and having no connection to NEPA cumulative effects analysis of past and proposed logging in the Beaver Creek drainage.

The 1996 IPNF Central Zone Beaver Creek Helicopter Salvage EA was cited in Objector's letter regarding logging on steep hillslopes. On page II-6 there is a statement regarding the Action Alternative. "*Under the Action Alternative, timber harvest would not significantly affect hillslope hydrology or channel function."*

The Aquatics information and analysis in the Beaver Creek Helicopter Salvage EA, including pages III-9 through III-18, numerous times mentions steep slopes, hillslope process relating to hydrologic recovery, and rain –on-snow risks.

On page III-14 of EA the Aquatics discussions of Alder Creek included the following statements "*The relatively high RSI values suggest increased bedload mobility and a channel morphology that is degraded with respect to aquatic biota. The degradation is likely the result of road building and the associated timber harvest" and "**Hillslope hydrologic recovery** would largely complete in 40 to 75 years*." (Emphasis added)

On page III-19 the following statement is made. "*The watershed analysis consisted of a field review of stream channel condition, a review of timber sale information from the Wallace Ranger District files, and professional judgment*."

Objector's July 19, 2013 letter also cited steep hillslope issues discussed in the 1997 IPNF Wallace & Fernan Ranger Districts Watershed Rehabilitation EA. Statements found on pages 11 and 14 of the EA directly relating to hillslope issues were cited in Objector's letter. These issues again directly relate to the cumulative effects analysis process.

One further example relating to logging on steep hillslopes is found in the FEIS on page 10 regarding the USFS Flathead National Forest ECA User Guide. On page 1 of the User Guide a USFS publication referred to as "Forest Hydrology Part II" is cited.
The following sentence is found on page 1. "*Forest Hydrology Part II also included a channel stability procedure to compliment the water yield component, in terms of evaluating in-stream effects resulting from vegetation management and subsequent increases in annual water yield and peak flows*."

On page 2 of the User Guide the first paragraph at the top of the page again mentions the publication "Forest Hydrology Part II." The second sentence is as follows. "*The worksheet incorporates the same water yield analysis procedures described in Forest Hydrology Part II, and can be run without the WATSED platform."*

In "Forest Hydrology Part II" there is Table 2A that concerns High, Moderate, or Low on-site and off-site watershed damage potential. Six criteria are cited in the Table 2, one of which is Slope gradient. The high rating for Seriousness or Magnitude of Potential Damage On-site for the criteria Slope gradient is listed as Steep Slopes 45%+.

Table 2B located on the next page of "Forest Hydrology Part II" concerns potential Off-site Damage issues. Slope gradient is again cited as one of the criteria with steep slopes 45%+ as having a high rating for Seriousness or magnitude of potential damage. Two other criteria cited in Table 2B include slope position and slope shape.

Apparently the professional judgment found in the Beaver Creek Salvage EA, the Watershed Rehabilitation EA, and Forest Hydrology Part II regarding hillslope issues does not apply to the cumulative effects analysis associated with the Beaver Creek FEIS.

A related cumulative effects issue concerns rain-on-snow analysis for the entire Beaver Creek watershed.
There is a very brief statement on page 11 of the FEIS that indicates a large area of the Beaver Creek watershed is in a rain-on-snow zone but no further information is cited on page 11 regarding the actual number of acres in the project area that are in the rain-on-snow zone. On pages eight (8) and 10 of the FEIS, project file document AQ-R10, Prichard-Beaver Sediment Yield is cited.

In April 1994 the Wallace R.D. released the FEIS for the 29,740- acre Prichard Project Area. This area is adjacent to the Beaver Creek Project Area.
In Chapter 2, page II-5 Table II-1 notes key issues associated with cumulative effects as including; frequency of pools, residual pool depth, residual pool volume. On page II-24 one of the requirements listed for Watershed/Fisheries issues and logging activity with all action alternatives is "*Avoid creation of new openings greater than five acres within the rain-on-snow zone."*

In Chapter III, page 26 the following statement is found. "*The rain-on-snow zone is an elevation band (2,500-4,500 feet) in which both the rate of snow accumulation and melt in harvested areas is greater than in similarly unharvested areas both above and below this zone."*

In Chapter III, page 27, it was noted, "*Rapid melting of a large part of the snowpack can result in large instantaneous peak flows*."

Also on page 27 the following statement is found. "*It is important to recognize that, except for mass failure hazards, model values do not include the delivery of coarse (larger than sand size) material to the stream and thus greatly underestimate the volume of material that may actually delivered to the channel*."

On page 28 the following statement is found. "*Because stream channel stability is a function of the relationship between discharge, longitudinal slope, sediment supply and*

size, the relationship between streamflow regime and water quality will also be used to evaluate stream channel stability."

Also concerning cumulative effects analysis and rain-on-snow, the October 1996 USGS, Boise, ID, Fact Sheet FS-222-96, discussed the February 1996 flood events in north Idaho that were associated with rain-on-snow events. The Fact Sheet noted flood peaks were the second largest ever recorded at the gauging station located at the North Fork Coeur d'Alene River at Enaville and the Coeur d'Alene River at Cataldo.

The Beaver Creek Helicopter Salvage EA, page III-19, indicated, "*During the February flood event a bridge located on Beaver Creek near Scott Gulch was severely damaged*."

Objector contends there is a lack of high quality data in either the DEIS or FEIS regarding the actual number of acres of new regeneration logging that would occur in the rain-on-snow zone.
There is a lack of high quality data in either the FEIS or DEIS regarding the number of acres in the rain-on-snow zone that are not fully recovered hydrologically. This lack of high quality data does not indicate the NEPA cumulative effects requirement at 40 CFR 1508.8 is being met.

Furthermore, in Lands Council V. Powell (No. 03-35640 C.C. No. CV-02-00517-EJL, 9th Cir, 2004) the Court found that when the cumulative effects analysis:

> "[C]ontains only vague discussion of the general impact of prior timber harvesting, and no discussion of the environmental impact from past projects on an individual basis, which might have informed analysis about alternatives presented for the current project" it is, "inadequate" because the cumulative effects analysis, "Must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment. ...Although the agency acknowledged broad environmental harms from prior harvesting, the data disclosed would not aid the public in assessing whether one form or another of harvest would assist the planned forest restoration with minimal environmental harm. For the public and agency personnel to adequately evaluate the cumulative effects of past timber harvests, the Final Environmental Impact Statement should have provided adequate data of the time, type, place, and scale of past timber harvests and should have explained in sufficient detail how different project plans and harvest methods affected the environment. The Forest Service did not do this, and NEPA requires otherwise."

Objector argues this FEIS fails to accurately and rigorously analyze the cumulative effects of past logging, particularly on steep slopes, and associated proposed logging with Alternative 2, to the impaired waters within and downstream of the Beaver Creek project area. The DEIS, FEIS, and previous USFS NEPA documents confirms there has been

significant USFS logging, including clearcuts, and road related activities throughout the Beaver Creek project area, including areas with steep hillslopes.

Also related to cumulative effects analysis are the NEPA requirements at 40 CFR 1508.27 Significantly. "*Significantly" as used in NEPA requires considerations of both context and intensity*:"

40 CFR 1508.27(a) Context includes the following statement. "*Both short – and long-term effects are relevant."*

As noted above 40 CFR 1508.27(b)(7) addresses cumulative effects issues. "*Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be dismissed by terming an action temporary or by breaking it down into small component parts".*

The sediment, temperature, and metals impaired waters in Beaver Creek and it tributaries is a significant water quality issue. As has been noted, previous regeneration (clearcut) logging of over 2,500 acres after 1980 has occurred in the project area. The proposed 1,973 acres of predominately regeneration logging would include total opening sizes of up to 434 acres, Table 14, page 14 of Silviculture report. The Silviculture report, page 61, Table 19, notes that the Mean Harvested Board Foot Volume Per Acre that could be removed with a Shelterwood prescription would be 18,947, and for a Seedtree prescription 21,172. Whether one or all of the Seedtree logging units and/or one or all of the Shelterwood logging units associated with Alternative 2 would be located adjacent to previous clearcut units in not discussed in the FEIS or ROD.

Objector contends the cumulative effects analysis associated with Alternative 2 in the FEIS and DEIS did not adequately consider the context, intensity, and significance of the past and proposed logging on steep hillslopes as required by 40 CFR 1508.27(b)(7).

3.Violation of Idaho Water Quality Standards:
The Draft ROD on pages 28 and 29 discuss compliance with Idaho WQS. On page 29 there is a statement that includes the following language, "… *to meet the intent of the water quality standards of the State of Idaho."*

Idaho WQS at IDAPA 58.01.02.054 contains regulations that apply to water bodies that do not fully support designated or existing beneficial uses, and do not meet Idaho WQS. The TMDL regulations at 054.04 for a high priority water quality limited water body require that the total load must remain constant or decrease within the watershed until the TMDL process is completed.

Idaho WQS at IDAPA 58.01.02.050 require protection of waters of the state, and require existing beneficial uses of the waters of the state will be protected.
Idaho WQS at IDAPA 58.01.02.080.01 and 01a state that no pollutant shall be discharged from a single source or in combination with pollutants discharged from other sources in

concentrations or in a manner that will or can be expected to result in violation of the water quality standards applicable to the receiving water body or downstream waters. Idaho WQS at IDAPA 58.01.02.003 describes nonpoint sources activities as including silviculture activities and runoff from storms or other weather related events.

Federal regulations at 40 CFR Part 131 at 131.3(h) define water quality limited segment as the following. "*Water quality limited segment means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-bases effluent limitations required by sections 301(b) and 306 of the Act*."

The Errata corrections in the FEIS, page eight indicates the required sediment reduction for all landowners is 704 tons/year. The specific amount of sediment reduction in tons/year for the USFS is not cited on page eight. Table 53, page 26 of the FEIS, lists 221 tons/year by roads for all of Beaver Creek, and also shows the total amount of sediment removed from streams as being 144.9 tons/year.
Along with the 76 tons/year that are not accounted for in the FEIS, it is apparent if all proposed sediment reduction activities associated with Alternative 2 were completed, there would still be significant amount of sediment, 471 tons/year entering the impaired water bodies in the project area.

Objector contends the release of additional sediment associated with the selected Alternative 2 would result in this sediment being transported through one or more of tributaries to Beaver Creek and then into Beaver Creek. This increased sediment release does not comply with Idaho WQS, in particular the TMDL requirements at IDAPA 58.01.02.054.04.

Objector contends the proposed activities would result in a violation of Idaho WQS at IDAPA 58.01.02.050.02a and 2b.
Objector contends the proposed activities would be in violation of IDAPA 58.01.02.051.01, and IDAPA 58.01.02.054.04.

Objector contends the discharge of the pollutant sediment violates Idaho WQS and thus would result in the violation of IDAPA regulation 58.01.02.080.01a and 01b.

4. Clean Water Act (Public Law 92-500)issues:
As noted above, pages 28 and 29 of the Draft ROD the CWA discussions the language indicates the selected Alternative 2 would meet the intent of water quality standards of the State of Idaho.

The CWA at 40 CFR Part 130 at 130.12(c) requires that each department of the Federal Government that is engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with all Federal and State requirements, process and sanctions respecting the control and abatement of water pollution in the same manner and extent as any non-governmental entity in accordance with section 313 of the CWA.

Objector contends the continued discharge and runoff of the pollutant sediment by the Forest Service with the Beaver Creek project would be a violation of the CWA at 40 CFR 130.12(c)

The CWA at 40 CFR Part 131 Water Quality Standards at 131.3(h) defines water quality limited segment. "*Water quality limited segment means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-bases effluent limitations required by sections 301(b) and 306 of the Act*." Water quality standards are defined at 131.3(i). *"Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act."*
Objector contends the sediment released by the selected Alternative 2 will negatively impact the already water quality limited segments within and/or downstream of the project area as defined by the CWA.

Objector contends the Beaver Creek project is not in compliance with the requirements of the CWA, including the antidegradation policy, 40 CFR 131.12.

Objector contends the Beaver Creek project does not serve the purposes of the Act due to the discharge and runoff of pollutants that will occur as a result of the proposed 1,973 acres of logging, new road construction, road reconstruction and reconditioning activities.

5. Aquatics analysis/NEPA violations:
As noted above, pages 26, 28, and 29 of the Draft ROD indicate compliance Forest Plan Aquatics requirements, and compliance with the CWA and Idaho WQS.

NEPA at 40 CFR 1500.1(b) requires accurate scientific analysis and expert agency comments. Objectors contend the statements on page 26, 28, and 29 of the Draft ROD is factually incorrect.
The Aquatics analysis in the FEIS, the DEIS, the fisheries analysis, the TMDL Beaver Creek Subbasin sediment load Allocation, clearly shows that sediment has moved and continues to move through the watershed in the project area, especially during heavy precipitation events that include rain on snow events.

There is no high quality information with accurate scientific analysis presented in the FEIS that support a contention there would be no sediment increases as a result of the selected Alternative 2.

NEPA at 40 CFR 1502.24 requires scientific integrity of the discussions and analyses in NEPA documents. Objector contends the science used by the Forest Service to support the statements on pages 26, 28, and 29 of the Draft ROD does not exhibit the high level of scientific integrity required by NEPA at 40 CFR 1502.24.

Request for Relief

Due to the violations of Federal and State laws and regulations cited the objector requests relief in the form of instruction to the IPNF that:

A Beaver Creek Supplemental Final EIS be prepared that fully addresses all sediment TMDL issues associated with sediment reduction requirement of 616 tons/year from NFS lands in the project area.

The Beaver Creek Supplemental FEIS provide high quality data indicating the total number of acres in the project area that are in the rain-on-snow zone, the total number of new regeneration logging units that would located in the rain-on-snow zone, the total number of new regeneration logging units that would be located on slopes 45% and greater, and the total number of new regeneration logging units that would placed adjacent to current clearcut logging units.

The Supplemental FEIS provide accurate scientific data with high quality data indicating the Selected Alternative would in fact be in full compliance with applicable Federal laws including; NEPA, NFMA, CWA, as well as the ARA, and APA, IPNF Forest Plan, and State of Idaho WQS.